FIRST DIVISION
December 16, 2013

No. 1-12-0950

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re S.G., a Minor,	)	Appeal from the Circuit Court
	)	of Cook County.
Respondent-Appellant	)	
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 11 JD 4697
	)	
S.G.,	)	Honorable
	)	Patricia Mendoza,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Connors and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 ***Held:*** The trial court did not err in denying the respondent-minor's motion to quash arrest and suppress evidence because the police officer had a reasonable, articulable suspicion supporting the brief detention of the respondent. Pursuant to the supreme court's holding in *People v. Aguilar*, 2013 IL 112116, respondent's delinquency adjudication under section (a)(1), (a)(3)(A) of the aggravated unlawful use of weapons statute is reversed. Neither section (a)(1), (a)(3)(C) nor section (a)(1), (a)(3)(I) violate the second amendment, however, and we therefore remand this matter to the trial court to determine which of these two adjudications should remain. The unlawful possession of a firearm statute does not violate the second amendment; this claim was rejected by the supreme court in *Aguilar*. Finally, under one-act one-

crime principles, we vacate respondent's delinquency adjudication for unlawful possession of a weapon.

¶ 2 Following a hearing, the trial court adjudicated minor-respondent S.G. a ward of the court for having committed the following offenses: three counts of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6 (West 2010) (the AUUW statute)) and one count of unlawful possession of a firearm (UPF) (720 ILCS 5/24-3.1 (West 2010)). The trial court then placed respondent on 18 months' probation. On appeal, respondent contends that: (1) the trial court erred in denying his motion to quash arrest and suppress evidence; (2) the AUUW statute violates the second amendment to the United States Constitution; (3) the UPF statute also violates the second amendment; and (4) in the alternative, certain of his convictions should be vacated under the one-act, one-crime rule. For the following reasons, we affirm in part, reverse in part, and remand for further proceedings.

¶ 3 BACKGROUND

¶ 4 The State alleged in a four-count petition for adjudication of delinquency that the 14-year-old minor-respondent, S.G., committed the offense of aggravated unlawful use of a weapon in that he knowingly carried a firearm on his person (or concealed on his person) when he was not on his own land, abode, or place of business. First, the State alleged that the firearm was uncased, loaded, and immediately accessible (730 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2010)). Second, the State alleged that respondent had not been issued a valid Firearm Owner's Identification (FOID) Card (730 ILCS 5/26-1.6(a)(1), (a)(3)(C) (West 2010) (hereinafter, the FOID subsection)). The third ground that the State alleged was that respondent was under the age of 21 at the time of the offense (and not engaged in lawful activities) (730 ILCS 5/26-1.6(a)(1), (a)(3)(I) (West 2010) (hereinafter, the Under 21

subsection)). Finally, the State also alleged that respondent committed the offense of unlawful possession of a firearm (UPF) in that respondent, while under the age of 18, knowingly possessed a firearm that could be concealed on his person (730 ILCS 5/24-3.1(a)(1) (West 2010)). Before trial, respondent filed a motion to quash arrest and suppress evidence, alleging that the arresting officer lacked probable cause to suspect respondent of criminal activity.

¶ 5 On November 30, 2011, the trial court held a hearing on respondent's motion. Respondent testified that he was 14 years old, and at around 6:30 p.m. on October 31, 2011, he was near the intersection of South Rockwell Avenue and West 64th Street in Chicago. Respondent and his friend were walking down Rockwell toward respondent's grandmother's house when respondent saw an unmarked police car driving toward them. According to respondent, the car approached them, pulled over, and then the officers inside asked respondent and his friend to come over to them. Respondent and his friend complied, and when the officers asked them where they were going, respondent responded that they were going to respondent's grandmother's house. At that point, the female officer, while still seated in the car, reached into respondent's pocket and removed a gun. That officer then "jumped out," handcuffed respondent, and placed him into the car.

¶ 6 On cross-examination, respondent said that he knew the unmarked car was a police car because he always saw that car and he knew the officers' faces, although respondent could not see that the officers were in uniform. Respondent denied that, when he first saw the car, he made eye contact with them and then stopped and turned around to go in the opposite direction.

¶ 7 After the trial court denied the State's motion for a directed verdict, the State called Officer Henigan to testify. Henigan, an eight-year veteran of the Chicago police department, stated that, at

around 6:30 p.m. on October 31, 2011, she and her partner were on routine patrol, which she said was concentrated on "high gang, high narcotic areas." She and her partner were in uniform, her partner was driving, and they were traveling in an unmarked car around 65th and Rockwell. They saw respondent and another individual walking northbound, and according to Henigan, when they saw her and her partner, respondent's eyes "widened very wide." Respondent and the other individual then suddenly stopped and tried to walk back toward the south. The officers stopped their car and asked the two individuals to come over to them.

¶ 8 As respondent and the other individual approached their car, Henigan noticed that respondent's right-side pocket appeared to be "a little heavy." Henigan explained that respondent's jacket seemed uneven in that the right-side pocket weighed heavier than the left side. Henigan was concerned that respondent could be concealing a weapon, so she conducted a "protective pat-down." Henigan said that she felt a hard object that she believed to be a gun. She removed the item and found that it was a firearm. Respondent then told the other individual to call respondent's mother, adding, "I'm gone."

¶ 9 Following argument, the trial court denied respondent's motion, finding that respondent's behavior after making eye contact with Henigan "raised in [Henigan's] mind a suspicion," which the trial court found to be sufficient to justify the officer's actions. The case then proceeded to a stipulated bench trial.

¶ 10 In addition to stipulating to the testimony from the hearing on respondent's motion, the parties agreed that Henigan would testify that: (1) the recovered handgun had two live rounds; (2) all proper inventory procedures were followed; and (3) respondent did not have a FOID card, was

not at his home or abode, and was under 18 years of age at the time he possessed the firearm. At the conclusion of the stipulations, the trial court found respondent "guilty on the aggravated unlawful use of a weapon charge. There will be a finding on Count I and all the other counts will merge." The trial court's written order similarly indicates a "guilty" finding solely on count I, with the other counts to "merge." The parties, however, agree that the trial court found respondent guilty of all four counts. The trial court then placed respondent on probation for 18 months.

¶ 11 This appeal followed.

¶ 12 ANALYSIS

¶ 13 The Motion to Quash Arrest and Suppress Evidence

¶ 14 Respondent first claims that the trial court erred in denying his motion to quash arrest and suppress evidence. Specifically, respondent argues that the arresting officer did not have a reasonable suspicion that respondent had committed or was about to commit a crime, because the officer testified that she called respondent over to her patrol car because respondent's eyes widened and he stopped walking when respondent saw her and her partner approaching in their car. Since the firearm was found on respondent as a result of the improper "stop," respondent asks that his conviction be reversed. Respondent does not challenge the propriety of the officer's subsequent pat-down search of respondent that resulted in the discovery of the firearm.

¶ 15 In reviewing a trial court's ruling on a motion to suppress, factual findings made by the trial court will be upheld on review unless they are against the manifest weight of the evidence, but the ultimate question of whether the evidence should be suppressed is reviewed *de novo*. *People v. Jones*, 215 Ill. 2d 261, 267-68 (2005). "A finding is against the manifest weight of the evidence only

if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *People v. Deleon*, 227 Ill. 2d 322, 332 (2008).

¶ 16 Both the fourth amendment to the United States Constitution (U.S. Const., amend. IV) and article I, section 6, of the Illinois Constitution (Ill. Const. 1970, art. I, §6) protect individuals from unreasonable searches and seizures. See also *Elkins v. United States*, 364 U.S. 206, 213 (1960) (noting that the fourth amendment applies to state officials through the fourteenth amendment). We interpret the search and seizure provision of the Illinois Constitution in "limited lockstep" with that of the United States Constitution. *People v. Caballes,* 221 Ill. 2d 282, 313-14 (2006). Under the fourth amendment, an individual is "seized" when an "officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *Florida v. Bostick*, 501 U.S. 429, 434 (1991). In other words, a person is seized within the meaning of the fourth amendment when a reasonable person would not feel free to leave under the circumstances surrounding the incident. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980).

¶ 17 Not every encounter between the police and a private citizen, however, results in a seizure. *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006) (citing *Immigration & Naturalization Service v. Delgado*, 466 U.S. 210, 215 (1984)). Rather, there are three tiers of police-citizen encounters: (1) arrests, which require probable cause; (2) brief investigative detentions, or *Terry*[1] stops, which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) "consensual encounters," which involve no coercion or detention and thus do not require fourth amendment protections. *Id.* (citing *United States v. Black*, 675 F.2d 129, 133 (7th Cir. 1982); *United States v.*

[1] *Terry v. Ohio*, 392 U.S. 1 (1968).

Berry, 670 F.2d 583, 591 (5th Cir. 1982)). Four factors that may be indicative of a seizure are: (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the person seized; and (4) the use of language or tone of voice indicating that compliance with the officer's request might be compelled. *Id.* at 553. It is true that the *Mendenhall* factors are not exhaustive and that a seizure may be found on the basis of other coercive police conduct similar to the *Mendenhall* factors. *Id.* at 557. The absence of *Mendenhall* factors, however, while not necessarily conclusive, is "highly instructive." *Id.* at 554 ("If those factors are absent, that means that only one or two officers approached the defendant, displaying no weapons, not touching the defendant, and not using any language or tone that would imply that compliance with their requests was compelled. Obviously, a seizure is much less likely to be found when officers approach a person in such an inoffensive manner."). "In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person." *Id.* at 555.

¶ 18 With respect to *Terry* stops, a police officer has authority under the fourth amendment to detain a suspect briefly and frisk him for weapons when the officer has a reasonable suspicion that, in light of his experience, "criminal activity may be afoot." *Terry*, 392 U.S. at 30. In determining the reasonableness of the officer's conduct, the facts must be analyzed not in hindsight but, as they would have been evaluated by a reasonable officer in the performance of his duties. *In re S.V.*, 326 Ill. App. 3d 678, 683 (2001) (citing *People v. Smithers*, 83 Ill. 2d 430, 439 (1980)). Courts should be mindful that the decision to make an investigatory stop is a practical one based on the totality of the circumstances. *Id.* (citing *People v. Sorenson*, 196 Ill. 2d 425, 439 (2001)).

¶ 19 Since an investigative *Terry* stop is brief and relatively unobtrusive, there are fewer fourth amendment concerns than an arrest or a search incident to an arrest, and therefore the "reasonable suspicion" standard is lower than the probable cause standard applicable to arrests or searches incident to an arrest. See *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (holding that the reasonable suspicion standard requires a showing "considerably less" than a preponderance of the evidence). Although an individual's mere presence in a "high crime area" alone is insufficient to support a reasonable, particularized suspicion that the person is committing a crime, the Supreme Court has held that "the fact that the stop occurred in a 'high crime area' [is] among the relevant contextual considerations in a *Terry* analysis." *Id.* at 124 (citing *Adams v. Williams*, 407 U.S. 143, 144, 147-148 (1972)). Notably, nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. *Id.* "Headlong flight--wherever it occurs--is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Id.* While a mere refusal to cooperate does not furnish the minimal level of objective justification needed for a detention or seizure, "unprovoked flight is simply not a mere refusal to cooperate." *Id.* at 125. "Flight, by its very nature, is not 'going about one's business'; in fact, it is just the opposite." *Id.* "Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning." *Id.*

¶ 20 In this case, the stipulated evidence was that Officer Henigan had been a police officer for over eight years. She and her partner were on routine patrol, focusing on areas with substantial gang and narcotics activity, when they saw respondent and another individual walking northbound.

Respondent's eyes widened, and then he and the other individual both suddenly stopped, turned around, and tried to walk back in the opposite direction. The officers then stopped their car, and Henigan asked them to come over to them. As noted above, the mere presence in a high crime area does not support a reasonable suspicion to briefly detain someone (although it is a "relevant contextual consideration"), but "nervous, evasive behavior is a pertinent factor in determining reasonable suspicion." *Id.* at 124. Evaluating these facts not in hindsight but through the lens of a reasonable officer in the performance of her duties, as we must (*S.V.*, 326 Ill. App. 3d at 683), the totality of the circumstances supports Officer Henigan's reasonable suspicion as to respondent. Respondent's act of evasion (namely, abruptly stopping his direction of travel toward the officers and turning around and attempting to proceed in the opposite direction) was not a mere refusal to cooperate; it was instead the very opposite of his going about his business. *Wardlow*, 528 U.S. at 125. As such, the trial court's factual finding was not against the manifest weight of the evidence because it was not "unreasonable, arbitrary, or not based on the evidence." *Deleon*, 227 Ill. 2d at 332. The trial court therefore did not err in denying respondent's motion.

¶ 21 Our holding is unaffected by the numerous cases on which respondent relies. In *People v. Davenport*, 392 Ill. App. 3d 19, 21 (2009), the officer pulled a vehicle over that had Colorado license plates and was traveling eastbound along Interstate 80 "near milepost 19 in Henry County." The court noted that the facts indicated only that "a Colorado vehicle slowed down as it passed a police officer on Interstate 80 in Illinois, and the vehicle's occupants were nervous after the vehicle was stopped." *Id.* at 28. The court therefore held that the officer's seizure was only based upon a hunch. *Id.* In *People v. Baldwin*, 388 Ill. App. 3d 1028, 1035 (2009), the officer testified that he was

suspicious of the defendant's "nervousness, heavy breathing, and right-hand placement," and added that, while repeatedly attempting to obtain consent to search the vehicle, the officer "saw the defendant turn around, look in the direction of [the officer] and the driver, reach into his pocket, and reach down along his side." This court similarly held that the officer lacked a reasonable, articulable suspicion to prolong the detention, finding that the officer's observations "essentially amount to nothing more than a hunch based on the 17-year-old passenger's nervousness." *Id.* In *People v. Marchel*, 348 Ill. App. 3d 78, 79-80 (2004), the sole basis underlying the officer's purported suspicion was that the defendant, in a " 'highly drug-infested' " area, "made a 'furtive' movement toward his mouth when he saw [the officer's] squad car," but the officer did not see the defendant place an object in his mouth. Similarly, the State in *People v. F.J.*, 315 Ill. App. 3d 1053, 1057 (2000), offered as the basis for the stop of the defendant that "it was night, there had been a 'gang disturbance' nearby, it was a high crime area, and [the defendant] put something in his pocket." Here, by contrast, respondent was not only present in a high-crime area, but upon seeing Officer Henigan and her partner driving toward them, appeared nervous and then attempted to flee in the opposite direction. *Davenport*, *Baldwin*, *Marchel*, and *F.J.* are therefore distinguishable.

¶ 22 Finally, in *People v. Harris*, 2011 IL App (1st) 103382, ¶ 4, the officer testified that he and his partner began to drive toward the defendant and another individual, and the two men then looked in their direction and appeared to hide behind a car. At that point, the officers got out of the car, announced their office, and walked up to them to conduct a field interview. *Id.* The defendant and the other individual then fled to a nearby house, but the officers caught up to them and stopped them on a porch. *Id.* On appeal, the State argued that the facts were similar to *Wardlow*. *Id.* ¶ 13. We

rejected the State's claim. We noted that the trial court rejected the officer's unsubstantiated response that the area where the defendant was detained and searched was "one of high burglaries and high robberies," and the State introduced no other evidence concerning the level of crime in that area. *Id.* ¶ 15. We held that "[t]hat deficiency distinguishes this case from *Wardlow*." *Id.* Again, in this case, respondent attempted to flee, and there was no challenge to Officer Henigan's testimony regarding the area in which she and her partner were patrolling. *Harris* is thus unavailing.

¶ 23 We further reject respondent's claim that, due to his status as a juvenile, his behavior should be brushed aside as mere erratic or nervous behavior. Respondent cites various Supreme Court decisions in support of this claim, including *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012), *Roper v. Simmons*, 543 U.S. 551 (2005), and *Graham v. Florida*, 560 U.S. 48 (2010). However, these cases, too, are distinguishable. "*Roper* and *Graham* establish that children are constitutionally different from adults *for purposes of sentencing*." (Emphasis added.) *Miller*, ___ U.S. at ___, 132 S. Ct. at 2464. *Miller* considered whether a mandatory sentence of life without parole for those under the age of 18 at the time of their crimes violates the eighth amendment's prohibition on cruel and unusual punishment. *Id.* at ___, 132 S. Ct. at 2460. This case concerns neither the eight amendment nor respondent's sentence. Accordingly, these cases are inapposite.

¶ 24 The AUUW Statute

¶ 25 Respondent next contends that the AUUW statute under which he was adjudicated a delinquent minor violates the state and federal constitutional rights to bear arms, and as a result, his convictions must be vacated. The State concedes that our supreme court held that the subsection of the AAUW statute under which respondent's judgment of conviction was entered (namely, his

conviction for possession of a firearm that was uncased, loaded, and immediately accessible) has been held to be unconstitutional. *People v. Aguilar*, 2013 IL 112116, ¶¶ 21-22. Based on *Aguilar*, we reverse respondent's delinquency adjudication and sentence under subsection (a)(1), (a)(3)(A) of the AAUW statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2010)).

¶ 26 Respondent, however, also challenges the constitutionality of the other two subsections under which he was convicted, and which were merged into the now-vacated conviction under subsection (a)(1), (a)(3)(A). Respondent's arguments regarding both the FOID subsection and the Under 21 subsection are similar. Specifically, respondent claims that, under *Aguilar*, those two additional subsections must be held unconstitutional. In addition, respondent argues that the two sections are unconstitutional because of the restrictions that are placed on those between the ages of 18 and 21. For the following reasons, respondent's claims are without merit.

¶ 27 As a preliminary matter, we find that nothing in *Aguilar* to indicate that either the FOID subsection or the Under 21 subsection were also unconstitutional; rather, *Aguilar* only held that subsection (a)(1), (a)(3)(A) of the AUUW statute (concerning the possession of an uncased, loaded, and immediately accessible firearm) was unconstitutional. To emphasize the limitation of its holding, the *Aguilar* court stated, "Of course, in concluding that the second amendment protects the right to possess and use a firearm for self-defense outside the home, we are in no way saying that such a right is unlimited or is not subject to meaningful regulation." *Aguilar*, 2013 IL 112116, ¶ 21. The court then concluded that, "we need only express our agreement with the obvious and undeniable conclusion that the possession of handguns by minors is conduct that falls outside the

scope of the second amendment's protection." *Id.* ¶ 27. We therefore reject respondent's interpretation of *Aguilar*.

¶ 28 With respect to the FOID subsection, respondent errs in claiming that the Firearm Owners Identification Card Act (FOID Card Act) (430 ILCS 65/1 *et seq.* (West 2010)) constitutes a blanket prohibition against those under the age of 18 who wish to obtain a firearm owner's identification (FOID) card. "Illinois secures to its citizens *** *individualized* consideration of a person's rights to keep and bear arms[, which] is reflected in the provisions of Illinois' FOID Card Act (see 430 ILCS 65/5, 8, 10 (West 2010))." (Emphasis in original.) *Coram v. State*, 2013 IL 113867, ¶ 58. Specifically, an individual who is denied a FOID card may appeal that denial, first to the Director of State Police (430 ILCS 65/10 (West 2010)), and if that first appeal is rejected, judicial review is then permitted (430 ILCS 65/11 (West 2010)). Nothing in the FOID Card Act excludes minors from this review process. Respondent's claim is thus erroneous.

¶ 29 Moreover, keeping in mind the well-established rules that all statutes are presumed constitutional and that, if reasonably possible, we must construe a statute so as to affirm its constitutionality (*In re Lakisha M.*, 227 Ill. 2d 259, 263 (2008)), we find that the FOID Card Act (which governs the FOID subsection of the AUUW statute) is "meaningful regulation" that the *Aguilar* court found to be consonant with second amendment rights. Other jurisdictions that have considered the issue have come to the same conclusion. See, *e.g.*, *Heller v. District of Columbia*, 670 F.3d 1244, 1254 (D.C. Cir. 2011) (holding that the requirement to register a handgun does not violate the second amendment); *People v. Perkins*, 880 N.Y.S.2d 209 (N.Y. App. 2009) (holding that New York's firearm licensing regulations do not violate the second amendment); *Commonwealth*

v. McGowan, 464 Mass. 232, 240-41 (2013) (holding that laws requiring a firearm identification card (to possess a firearm in one's home or place of business) or a license to carry (to possess a firearm elsewhere) do not violate the second amendment). Respondent's claim is thus unavailing.

¶ 30 Turning to his claim that the Under 21 subsection of the AUUW statute is unconstitutional, we note that the *Aguilar* court held that the possession of firearms by a minor is conduct that falls *outside* the protections of the second amendment. Respondent's claim is thus meritless.

¶ 31 Respondent, however, argues in reply that both subsections are unconstitutional because of the restrictions that are placed upon those between the ages of 18 and 21. Particularly with respect to the Under 21 subsection, respondent posits that the holding in *Aguilar* "does not encompass the rights of individuals between the ages of 18 to 20 who are members of the political community and thus possess the same right to bear arms as a 21-year-old." We reject this contention, however, because respondent lacks standing to raise this particular challenge.

¶ 32 " 'The purpose of the doctrine of standing is to ensure that courts are deciding actual, specific controversies, and not abstract questions or moot issues.' " *In re M.I.*, 2013 IL 113776, ¶ 32 (quoting *In re Marriage of Rodriguez*, 131 Ill. 2d 273, 279-80 (1989)), *cert. denied*, No. 13-5925 (U.S. Oct. 15, 2013). To have standing to bring a constitutional challenge, a person must show himself to be within the class aggrieved by the alleged unconstitutionality. *Id.* Where, as here, there is no constitutional defect in the application of the statute to a litigant, "that person does not have standing to argue that it would be unconstitutional if applied to third parties in hypothetical situations." *Id.* (quoting *People v. Funches,* 212 Ill. 2d 334, 346 (2004)). If there are no facts showing that the statute was unconstitutionally applied, a person " 'may not challenge the statute on the ground that

it might conceivably be applied unconstitutionally in some hypothetical case.' " *Id.* (quoting *People v. Wisslead*, 108 Ill. 2d 389, 397 (1985)). Rather, a person must be directly or materially affected by the attacked provision and must be in immediate danger of sustaining a direct injury as a result of enforcement of the challenged statute. *Id.* " 'Standing is an element of justiciability, and it must be defined on a case-by-case basis.' " *Id.* (quoting *People v. Greco*, 204 Ill. 2d 400, 409 (2003)).

¶ 33 Here, respondent lacks standing to challenge either the FOID subsection or the Under 21 subsection as they pertain to individuals over the age of 18. At the time of the offense and his adjudicatory hearing, he was 14. The supreme court has explicitly agreed with "the obvious and undeniable conclusion that the possession of handguns by minors is conduct that falls *outside* the scope of the second amendment's protection." (Emphasis added.) *Aguilar*, 2013 IL 112116, ¶ 27. Considering the constitutionality of either subsection as it relates to those between the ages of 18 and 21 would be improper here for two reasons. First, there is no constitutional defect in the application of the statute to respondent, and therefore he does not have standing to argue that it would be unconstitutional "if applied to third parties in hypothetical situations." or that " 'it might conceivably be applied unconstitutionally in some hypothetical case.' " *M.I.*, 2013 IL 113776, ¶ 32. Second, courts address constitutional issues only as a last resort, relying whenever possible on nonconstitutional grounds to decide cases. *Mulay v. Mulay*, 225 Ill. 2d 601, 607 (2007). Accordingly, we decline respondent's invitation to examine the constitutionality of either subsection as it relates to individuals between the ages of 18 and 21 because respondent lacks standing to mount such a challenge. Since respondent cannot show that either subsection of the AUUW statute "would be invalid under *any* imaginable set of circumstances," his facial challenge to the constitutionality

of those subsections necessarily fails. (Emphasis in original.) See *In re M.T.*, 221 Ill. 2d 517, 536 (2006).

¶ 34 The UPF Statute and the One-Act, One-Crime Rule

¶ 35 In his opening brief, respondent also challenges his delinquency adjudication for unlawful possession of a firearm (720 ILCS 5/24-3.1(a)(1) (West 2010)). As with his challenge to the AUUW statute, he argues that the UPF statute violates his federal and state constitutional rights to bear arms. After he filed the brief, however, our supreme court rejected this same argument. *Aguilar*, ¶ 28. Accordingly, respondent's challenge to the UPF statute fails.

¶ 36 Turning to respondent's final alternative contention, he asks that we vacate certain of his delinquency adjudications under the one-act, one-crime rule. Although an appeal generally cannot be entertained in the absence of a final judgment in a criminal case (which is the imposition of the sentence), we may entertain jurisdiction where, as here, a greater conviction is vacated so that a nonfinal, unsentenced conviction can be reinstated. *People v. Flores*, 128 Ill. 2d 66, 95 (1989); *People v. Dixon*, 91 Ill. 2d 346, 353-54 (1982).

¶ 37 Under the one-act, one-crime rule, a defendant may not be convicted of multiple offenses that are based upon precisely the same single physical act. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010) (citing *People v. King,* 66 Ill. 2d 551, 566 (1977)). Where, as here, a defendant is convicted of two offenses based upon the same single physical act, the conviction for the less serious offense must be vacated. *Id.* (citing *People v. Lee*, 213 Ill. 2d 218, 226-27 (2004)).

¶ 38 Here, the allegations in the State's petition for adjudication of wardship were based upon the same incident: respondent's possession of a firearm. No sentence was imposed on respondent's

UPF adjudication. Instead, the trial court merged that adjudication into the section (a)(1), (a)(3)(A) AUUW adjudication (possession of an uncased, loaded, and immediately accessible firearm), and then placed respondent on probation. We have already held, however, that respondent's section (a)(1), (a)(3)(A) AUUW adjudication must be vacated. Therefore, as in *Dixon*, this case must be remanded to the trial court to determine whether to enter a delinquency adjudication on the FOID subsection or the Under 21 subsection. See also *People v. Artis*, 232 Ill. 2d 156, 177-79 (2009). After entering the delinquency adjudication on the remaining AUUW count, the trial court shall then vacate the delinquency adjudication for the UPF offense.

¶ 39 CONCLUSION

¶ 40 Accordingly, we affirm the trial court's denial of respondent's motion to quash arrest and suppress evidence, and reject respondent's constitutional challenges to the FOID subsection (subsection (a)(1), (a)(3)(C)) and the Under 21 subsection (subsection (a)(1), (a)(3)(I)) of the AUUW statute. We reverse, however, respondent's delinquency adjudication for the offense of AUUW under section (a)(1), (a)(3)(A). Finally, we remand the cause to the trial court to: (i) determine whether to enter a delinquency adjudication on subsection (a)(1), (a)(3)(C) of the AUUW statute (730 ILCS 5/26-1.6(a)(1), (a)(3)(C) (West 2010)) or subsection (a)(1), (a)(3)(I) of the AUUW statute (730 ILCS 5/26-1.6(a)(1), (a)(3)(I) (West 2010); and (ii) vacate the delinquency adjudication for UPF. The sentence imposed on the remaining AUUW adjudication shall not exceed the sentence originally imposed, and respondent shall receive credit for time already served. See *Aguilar*, ¶ 30.

¶ 41 Affirmed in part; reversed in part; and remanded with directions.